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Nos. 220-222

In the Supreme Court of the United States

OCTOBER TERM, 1944

SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE

BRITISH ASSETS TRUST, LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE

SECOND BRITISH ASSETS TRUST, LIMITED,
PETITIONER

COMMISSIONER OF INTERNAL REVENUE

A PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 220

SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 221

BRITISH ASSETS TRUST, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 222

SECOND BRITISH ASSETS TRUST, LIMITED,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R.
77-92) is reported in 47 B. T. A. 474. The opin-

(1)

ion of the Circuit Court of Appeals (R. 135-140) is reported in 142 F. 2d 401.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on April 6, 1944 (R. 140-142). The petition for writs of certiorari was filed on July 3, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayers were engaged in trade or business, or had an office or place of business, within the United States during the taxable years 1938 and 1939, so as to qualify as resident foreign corporations within the meaning of Section 231 (b) of the Revenue Act of 1938 and the Internal Revenue Code, and of Article 231-1 and Section 19.231-1 of Treasury Regulations 101 and 103, respectively.

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 231. TAX ON FOREIGN CORPORATIONS.

(b). *Resident Corporations.*—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (c) (1).

Section 231 (b) of the Internal Revenue Code, applicable to the year 1939, is substantially the same.

Treasury Regulations 101, promulgated under the Revenue Act of 1938:

ART. 231-1. *Taxation of foreign corporations.*—

Whether a foreign corporation has an "office or place of business" within the United States depends upon the facts in a particular case. The term "office or place of business," however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.

Section 19.231-1 of Treasury Regulations 103, promulgated under the Internal Revenue Code, applicable to the year 1939, is substantially the same.

DISCUSSION

This case, which presents the question whether the taxpayers should be classified as resident foreign corporations in the years 1938 and 1939, is a companion case to *Commissioner v. The Scottish American Investment Company, Ltd., et al.*, Nos. 52-54, this Term, raising the identical question, involving the same taxpayers and the same findings of fact, with respect to the years 1936 and 1937. Both cases were tried together on a single record

by the Board of Tax Appeals, and were decided by the Board in a single opinion. A statement of the facts found by the Board (R. 79-87) appears in the petition for certiorari filed by the Government in Nos. 52-54. The Board held that the taxpayers had an office or place of business within the United States in 1938 and 1939, as well as in 1936 and 1937, and hence came within the statutory definition of resident foreign corporation. Since the taxpayers' returns for the years 1936 and 1937 were filed with the Collector of Internal Revenue for the District of Maryland (R. 79), petitions for review of the Board's decision with respect to those years were taken to the Circuit Court of Appeals for the Fourth Circuit, which affirmed the Board's ruling on November 9, 1943. The Commissioner thereupon filed a petition for certiorari, which was granted on May 29, 1944.

The taxpayers' returns for the years 1938 and 1939 were filed with the Collector of Internal Revenue for the District of New Jersey (R. 79); consequently, petitions for review of the Board's decision relating to those years were taken to the Circuit Court of Appeals for the Third Circuit. On April 6, 1944, the court below, holding that the taxpayers did not have an office or place of business within the United States during the years 1938 and 1939, reversed the decision of the Board with respect to such years. (R. 135-140.) The decision below thus created a conflict which was

made the basis of the petition for certiorari in Nos. 52-54.

Although different taxable years are involved, the statutes and regulations construed are the same in each case. The decision below is therefore in direct conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in Nos. 52-54. Accordingly, we do not oppose the issuance of writs of certiorari in the present case.

Respectfully submitted,

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Special Assistants to the Attorney General.

JULY 1944.

Section 231 of the Revenue Act of 1938 and of the Internal Revenue Code, Article 231-1 of Treasury Regulations 101, and Section 19.231-1 of Treasury Regulations 103, applicable to the years 1938 and 1939, are substantially the same as the corresponding provisions of the Revenue Act of 1936 and Treasury Regulations 94, applicable to the years 1936 and 1937.